IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FOURTEENTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 2386 of 1997

Between:

Bandaru Venkateswara Rao S/o. Suryanarayana
R/o. 2-3-370 Near Adarsha Vidyalam, Pitapuram,
East Godavari Dist.

..... PETITIONER

AND

1 Government of Andhra Predesh rep by its Secretary, Co-operation Department, Secretariat Buildings, Hyderabad.
2 Vijayawada Regional Office, Central Bank of India,
Vijayawada. Rep.by its Regional Manager
3 Central Bank of India farmer Service Co-Op. Society Ltd.,Regd.No.C.753 rep. by its Managing Director, Pitapuram, E.G. Dist.
4 The Divisional Co-Operative Officer
kakinada, East Godavari Dist.

....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, Order or Direction more particularly one in the nature of writ of Mandamus declaring the action of the 2nd respondent in directing the 3rd respondent society to withhold the promotion of the petitioner as shown in the letter of the 2nd respondent dated: 8-1-1997 and set aside the consequential Memo No.CBI/FSS/PTP/96-97/87 dated 8-1-1997 of the 3rd respondent by declaring the same as illegal, arbitrary and without jurisdiction.

Counsel for the Petitioner: MR.A.SATYA PRASAD

Counsel for the respondents 1 and 4:The GP for Co-operation

Counsel for the Respondent No. 2: MR.L.P.R.VITTAL

Counsel for the respondent No.3: None appeared

The Court made the following:

ORDER:

This Writ petition is filed by the petitioner aggrieved by the proceedings of the respondents 2 and 3 as per which the orders of promotion dated 30.11.1996 was kept in abeyance after more than a month after its implementation.

2. According to the petitioner he was appointed as Attender on 1.2.1996 on compassionate grounds as his father B. Suryanarayana who was working as Field Officer, died in harness while in service on 01.01.1995 leaving his wife and three children. The petitioner being one of the sons of the deceased B. Suryanarayana made an application for appointment on compassionate grounds. Accordingly, the society passed appropriate resolutions and after obtaining necessary approval, appointed the petitioner on 01.02.1996. Subsequently his appointment was regularized on 03.08.1996. Later a post of Godown Keeper fell vacant due to the resignation of the incumbent. Therefore, the petitioner made a representation stating that his case may be considered either for appointment/ promotion to the post of Godown Keeper. Thus, the issue was considered in the General Body Meeting of the third respondent society. Further the said decision of the Board of Directors was communicated to the 4th respondent, and after obtaining the approval from the 4th respondent the petitioner was promoted by proceedings No. CBI/FSS.PTP/96-97/73 dated 30.11.1996 and the petitioner assumed the office as a Godown Keeper with effect from 01.12.1996. While the petitioner was working as Godown Keeper, the third respondent issued a proceeding pursuant to the communication of the second respondent dated 08.01.1997 under which the third respondent was directed to keep the petitioner's promotion to the post of Godown Keeper in abeyance. Assailing the said proceedings the petitioner has come up with the present Writ Petition.

3. It is stated that by virtue of the interim order passed by this Court dated 10.02.1997

the petitioner is continuing in the said post for the last more than seven years.

4. According to the learned Counsel for the petitioner the third respondent society framed special by-laws relating to the service conditions of its employees and those special by-laws were approved by the Registrar of Cooperative Societies as contemplated under the A.P. Co-operative Societies Act. It is also stated that as per the said Special By-laws, the Managing Director is competent to appoint all the members of the establishment. Pursuant to that, the representation of the petitioner was considered by the General Body and as per the decision at General Body Meeting as well as Board of Directors, the case of the petitioner was favourably considered as per the resolution passed by the third respondent on 28.11.1996 and accordingly after obtaining the approval of the 4th respondent, third respondent issued orders promoting the petitioner to the post of Godown Keeper. The petitioner also assumed the charge as Godown Keeper in the office in pursuance of the said proceedings. It is only after more than a month, the second respondent issued proceedings advising the Managing Director of the third respondent to withhold promotion of the petitioner. According to the second respondent, the third respondent society is incurring heavy losses. Pursuant to which, the third respondent passed the impugned order. According to the learned counsel when once the appointing authority-Managing Director appointed the petitioner as Godown Keeper by promotion in pursuance of the decision of the Board of Directors as well as the decision in the General Body Meeting, the second respondent is not competent to issue such direction to withhold the promotion which order has already been implemented as the petitioner assumed the office in that post on 01.12.1996 itself and has drawn the pay for that month as Godown Keeper. As the promotion and appointment given to the petitioner is in accordance with the byelaws, the impugned proceedings are illegal and without jurisdiction.

5. On behalf of the second respondent and 4th respondent counters have been filed. In the counter filed by the 4th respondent it is simply stated that the Writ Petition is not maintainable and there is no provision for appointment of the petitioner on compassionate grounds as per the bylaws. In the counter, it is also stated that by the decision and the recommendations of the Managing Director/third respondent society as per its resolution the issue was forwarded to the District Co-operative Officer. The Commissioner of Cooperation and Registrar of the Cooperative Societies permitted to appoint the petitioner as Attender. But however, as far as

promotion of the petitioner to the post of Godown Keeper is concerned, there was no approval by the Registrar. The proceedings of the 4th respondent is only a letter and not proceeding. Therefore, it is stated that there is no warrant for interference of this Court with the impugned order.

6. In the counter filed on behalf of the second respondent it is stated that the promotion of the petitioner by the third respondent society is illegal and the same is contrary to the service regulations as well as the needs of the society and further for want of prior approval of the Commissioner of the cooperative societies. For appointment of the staff in the society, the society has to obtain permission from the Registrar of Cooperative Societies after fixing the staff pattern, qualifications, pay scales and other allowances by the third respondent. Without prior approval from the concerned authority, the society has promoted the petitioner which is illegal and contrary to the rules and bye-laws of the society. The second respondent which is a financing bank has got vital interest in the affairs of the third respondent society. Therefore, the proceedings have been issued for rectification of the illegality.

7. Heard both sides. Considered the material on record.

8. The Issue to be considered is: Whether the appointment of the petitioner as Godown Keeper by way of promotion is in accordance with the by-laws governing the appointment and service conditions of the employees of the third respondent society?

9. Admittedly, special byelaws have been framed which are approved by the Registrar of the Cooperative Societies which fact is not disputed. As per the by-laws, there is no specific byelaw, which contemplate that the appointment or promotion with reference to each employee requires to be approved by the Registrar of the Cooperative Societies. A further reference to Section 116 (C) of the A.P. Cooperative Societies Act also shows that society shall have power to fix the staffing pattern, qualifications, pay scales and other allowances for those employees, but such prescriptions shall be with the prior approval of the Registrar of Cooperative Societies. Therefore, there is no specific provision either in the provisions of the Act or in the by-laws which contemplates prior approval with reference to each appointment or promotion of the staff of the society. The impugned proceedings also

does not show that the appointment or promotion of the petitioner as Godown Keeper is violated by any of the by-laws nor it was the case of the respondents that the petitioner did not possess the requisite qualifications for being appointed as Godown Keeper by way of promotion. In the absence of any of those grounds the proceedings issued by the second respondent directing the third respondent to keep the promotion of the petitioner in abeyance is illegal and without jurisdiction. The appointment of the petitioner as Attender was without prior approval of the Registrar of Coopeative Societies and thereafter appointment as Godown Keeper by way of promotion is as per the decision of the Board of Directors as well as the decision in the General Body meeting, in pursuance of which the Managing Director of the third respondent society passed orders and the orders were also given effect from 1.12.1996. Therefore, there is no scope for the second respondent to issue any directions to the third respondent to withhold the order of promotion which is already given effect to. Further, if there are any defects or non- compliance of any of the provisions, it is open to the second respondent to specify such omissions or commissions, but it is not the case of the second respondent that there are any such omissions or commissions. The only objection taken by the second respondent is that prior approval of the Registrar of societies was not obtained which is not at all required as per the byelaws as well as the provisions of the A.P. Cooperative Societies Act. Further, as the petitioner has already been continuing in the post of Godown Keeper since December, 1996, it would not be proper to drive him out from the said post without any justifiable grounds. In the above circumstances the impugned proceedings of the respondents 2 and 3 are set aside.

11. In the result, the Writ Petition is allowed. No costs.

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14-09-2004

kvrm

That Rule Nisi has been made absolute as above

Witness the Hon'ble Sri Devinder Gupta, The Chief Justice on this the Tuesday the Fourteenth day of September, two thousand four.

To

1 The Secretary,Government of Andhra Predesh, Co.operation Department, Secretariat Buildings, Hyderabad.

2. The Regional Manager, Vijayawada Regional Office, Central Bank of India, Vijayawada.

3. The Managing Direction, Central Bank of India farmer Service Co-Op. Society Ltd., Regd.No.C.753, Pitapuram, E.G. Dist.

4 The Divisional Co-Operative Officer
kakinada, East Godavari Dist.

5. 2 CCs to GP for Co.operation, High court of A.P.,Hyderabad (OUT)

6. 2 CD copies